

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING**

76-6143

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ONE 1974 PLYMOUTH FURY III SEDAN, VEHICLE
IDENTIFICATION NUMBER PH41K4F158253,
Defendant in Rem.

On Appeal from Judgment of Forfeiture, Granted
Upon Plaintiff's Motion for Judgment on the Pleadings,
Entered by the Honorable Charles E. Stewart, U.S.D.J.
(S.D.N.Y.) (No. 74 Civ. 4823 (CES))

APPELLANT'S PETITION FOR REHEARING
PURSUANT TO F.R.A.P. 40 BEFORE
ORIGINAL PANEL

STEVEN H. GEFIS,
Attorney for Appellant,
68 Bayberry Road,
Princeton, New Jersey 08540
(609) 466-3550

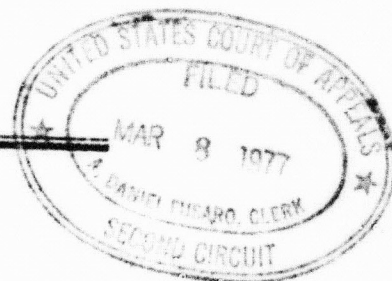


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INTRODUCTION

On February 23, 1977, this Court (Mansfield, Van Graafeiland, C.J.J., and Carter, D.J.) denied claimant's motion to amend the pleadings or, in the alternative, for partial remand, and summarily affirmed the judgment below from the bench. The Court affirmed, in its words, "only on the ground of lack of standing." This wording has created a crucial ambiguity over the Court's disposition of the issues raised on this appeal. This petition seeks to clarify the Court's holding and resolve this ambiguity.

STATEMENT OF THE CASE

For the purpose of this Petition for Rehearing, the claimant adopts by reference her prior statement of the case as it appears in her original brief on appeal at pp. 1-5.

ISSUES PRESENTED FOR REVIEW

There seems to be two equally palusible interpretations of this Court's holding:

(a) The Court's holding can be interpreted to mean that the claimant lacks standing to assert the Fourth Amendment claim of her deceased husband because her status as the administratrix of his estate was not properly pleaded below. If that is the Court's holding, it would seem that appellate disposition of this case is incomplete, because the Court did not rule on the other main issue raised on this appeal, whether or not there was sufficient probable cause to permit forfeiture of the subject vehicle under the applicable federal statute, 21 U.S.C.

§861. The determination of this issue does not turn on the claimant's standing as administratrix; or

(b) The Court's holding could be construed to mean that the claimant lacked a sufficient enough interest in the subject vehicle to bring this action to contest the entire forfeiture. However, claimant submits that even if the assignee was the only party properly before the district court below, the assignee, as the holder of good legal title to the subject vehicle, has standing to defend this forfeiture action.

ARGUMENT

APPELLATE DISPOSITION OF THIS CASE
IS EITHER INCOMPLETE OR ERRONEOUS
BECAUSE THE CLAIMANT CLEARLY HAS
STANDING AS THE LEGAL TITLE HOLDER
TO DEFEND THIS FORFEITURE ACTION.

The government urged the Court to reach result (b) above. In Point I of its brief on this appeal, at page 12, the government argued that were this Court to find that the administratrix was not a proper party below, such a finding would be "dispositive of the standing issue and all succeeding issues on this appeal." The government argued that the claimant's capacity as assignee was the only one properly pleaded below, and that an assignee in these circumstances has an insufficient interest to contest the sufficiency of probable cause for forfeiture.

However, the government's position is erroneous in two crucial respects. First, contrary to the government's assertions, and the implied holding of the District Court below, the claimant in her original, properly filed answer, pleaded her status as assignee of the legal title to the subject vehicle, and also pleaded, her status as the primary distributee of the estate of her deceased husband, Hugo Molina-Perez, who died intestate. See Claimant's Answer, Appendix on Appeal, page A-9. Second, and most important, either or both of these capacities that is, as title holder and/or statutory distributee, the claimant has a sufficient enough interest in the subject vehicle to challenge its forfeiture.

Rule C(6), Federal Rules of Civil Procedure, Supplemental Rules for Certain Admiralty and Maritime Claims, states that the claimant of property sought to be forfeited "...shall state the interest in the property by virtue of which the claimant demands its restitution and the right to defend the action." An examination of claim filed by appellant in this action reveals that the claim was filed on behalf of the claimant and her mother-in-law, Isodora Molina, who held good legal title to the vehicle and who subsequently assigned it to the claimant. The claimant's properly filed answer alleges that she is: (a) the assignee of "all rights and interests in the vehicle...", and (b) together with her eight-year son, "...the sole beneficiaries of the deceased, Hugo Molina-Perez."

The claimant is thus primarily the holder of good legal title to the subject vehicle. It is undisputed that the holder of legal title to property sought to be forfeited has standing to file a claim against the property and defend the forfeiture. Calero-Toledo v. Pearson Yacht Leasing Corp., 416 U.S. 663 (1974); J.W. Goldsmith-Grant Co. v. United States, 254 U.S. 505 (1921); Boyd v. United States, 116 U.S. 616 (1896). The fact that the claimant in this case was assigned the legal title to the car, or that she took from a "straw person" is legally irrelevant. The important point is that legal title to property is sufficient to give the holder standing to defend it in a forfeiture action.*

*Most of the cases dealing with standing in the forfeiture

In addition, the claimant here properly plead her status as the primary beneficiary of her deceased husband's intestacy estate. She thus has an important interest in the proper distribution of the only significant asset in her deceased husband's estate, the subject vehicle. This interest is important because it clothes the claimant with more than naked legal title, and satisfies one of the major policy considerations underlying the forfeiture statutes.

The forfeiture statutes aim to discourage illegal activity by making it unprofitable to raise revenue for the government, and to prevent the return of the tainted property, the deodand, to persons who would be likely to use it again illegally. The claimant's equitable interest in the subject vehicle goes to the heart of this last consideration. Unlike a mere assignee, who might well return the subject vehicle to disreputable individuals who would use it again in questionable activities, the claimant is interested in vindicating her interest in the vehicle solely for the financial benefit of herself and her nine-year old son. More importantly, the subject vehicle has been sold to a reputable dealer at a sheriff's sale to prevent

area involve an issue present below here, that is, the standing of an innocent titleholder who was not the object of a search to seek the suppression of evidence illegally seized as a result of the search. E.G. Boyd v. United States, supra. In all forfeiture cases, it is assumed sub silentio that a titleholder has a sufficient interest to defend in the forfeiture proceeding.

its further depreciation, a fact which obviates the traditional concern that it might once again fall into questionable hands. What is at stake at this stage of the litigation is a sum of money of no small financial consequence to the claimant.

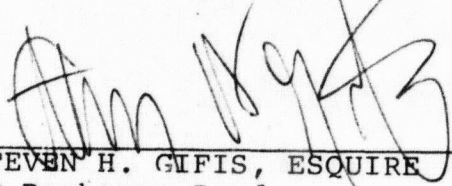
The effect of granting rehearing in this case would be to present this Court with the issue of whether there was sufficient probable cause to grant forfeiture on the facts of this case under the terms of the applicable federal statute, 21 U.S.C. §881. This issue has been fully briefed on this appeal.

The claimant's position is that 49 U.S.C. §781 is inapplicable here, that there was an insufficient nexus between the contraband and the subject vehicle in the instant case to support forfeiture under 21 U.S.C. §881, and that under the peculiar circumstances of this case, claimant has met her burden of proving that the car was not illegally used. The government has met all of these arguments in Points III and IV of its brief on this appeal.

CONCLUSION

This Court held on February 23, 1977 either that the claimant lacks standing to assert the Fourth Amendment claim, or that she lacks standing to defend the entire forfeiture. Under the first interpretation, the Court's disposition of the issues on this appeal is incomplete; under the second, it is simply erroneous. Under either interpretation, the interests of justice require that the Court reconsider this case.

Respectfully submitted,



STEVEN H. GIFIS, ESQUIRE
68 Bayberry Road
Princeton, New Jersey 08540
(609) 466-3550

March 8, 1977

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the ^{twenty-third} day of February one thousand nine hundred and ~~seventy-seven~~.

Present:

HON. WALTER R. MANSFIELD

HON. ELSWORTH A. VAN GRAAFEILAND
Circuit Judges

HON. ROBERT L. CARTER
~~Circuit Judge~~ District Judge

United States of America,

Plaintiff-Appellee

v.

One 1974 Plymouth Fury III Sedan
Automobile, Vehicle Identification
No. PH41K4F158253,

76-6143

Defendant-Appellant.

Appeal from the United States District Court for the Southern
District of New York.

This cause came on to be heard on the transcript of record from the
United States District Court for the Southern District of
New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged,
and decreed that the order and judgment of said District
Court be and it hereby is ~~affirmed~~ they hereby are affirmed with costs to be
taxed against the appellant.

A. DANIEL FUSARO,
Clerk

By VINCENT A. CARLIN,
Chief Deputy Clerk

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Robert B. Fiske, Jr.
UNITED STATES ATTORNEY

3/8/77
Marion F. Bryant